



September 16, 2019

**Via ECFS**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th St., SW, Room TW-A325  
Washington, DC 20554

Re: Ex Parte Communication  
*In the Matter of Updating the Inter-carrier Compensation Regime to Eliminate  
Access Arbitrage*, WC Docket No. 18-155

Dear Ms. Dortch:

On September 16, Charles McKee and Norina Moy of Sprint met with Joseph Calascione, Commissioner Carr's Legal Advisor, regarding the Draft Order on access stimulation in the above-captioned proceeding.<sup>1</sup> I also spoke with Lisa Hone and Gil Strobel of the Wireline Competition Bureau on September 13 regarding the Draft Order.

In these meetings, Sprint expressed its strong support for the tentative decision in the Draft Order to require access stimulating LECs – rather than IXC's – to bear financial responsibility for all tandem switching and transport service charges associated with the delivery of access-stimulation traffic to the LEC end office or its functional equivalent. In Sprint's view, aligning financial responsibility in this manner will help reduce the incentives to engage in access stimulation schemes. To further reduce the potential for inefficient access arbitrage, Sprint suggested the following clarifications to the Draft Order.

First, to ensure that all costs of tandem switching and transport service are properly assigned to the access stimulating LEC, and to prevent an access stimulating LEC from designating a traffic route that does not include a carrier operating under a tariff governed by the Commission's rules, the Draft Order's references to "tariffed" tandem switching and transport charges should be revised to remove the word "tariffed". Thus, paragraph 4, and consistently elsewhere throughout the Draft Order, should be revised as follows:<sup>2</sup>

---

<sup>1</sup> FACT SHEET "Updating the Inter-carrier Compensation Regime to Eliminate Access Arbitrage", Report and Order and Modification of Section 214 Authorizations, WC Docket No. 18-155 (September 5, 2019) (*"Draft Order"*).

<sup>2</sup> Other sections of the Draft Order, including the following, should be similarly modified:

To eliminate the use of the ICC system to subsidize services, including the many “free” services offered through access stimulation schemes, we adopt rules making access-stimulating LECs—rather than IXC—financially responsible for the ~~tariffed~~ tandem switching and transport service access charges associated with the delivery of traffic from an IXC to the access-stimulating LEC end office or its functional equivalent.

Second, given the Commission’s recognition that high volumes of stimulated traffic can result in call completion problems and dropped calls (see paragraph 77 of the Draft Order), the Draft Order should affirmatively state that an IXC/wireless carrier satisfies its rural call completion obligation by monitoring the delivery of access-stimulation traffic to the LEC-chosen Intermediate Access Provider.

Third, the Draft Order should re-iterate that classifying a high-volume calling provider, such as a “free” conference calling provider or a chat line provider, as an end user for purposes of defining access stimulation in no way affects or supersedes the definition of end user in other respects. The Draft Order (paragraph 49) emphasizes that this end user classification is to be used only for purposes of defining access stimulation, “regardless of how that term is defined in an applicable tariff.”

Because there is significant litigation still pending that relates to the existence of an “end user” as defined in the tariffs, FCC rules and orders, the Commission should clarify that the consideration of a “free” conference calling provider or chat line provider as an end user for purposes of identifying entities engaged in access stimulation does not overturn or supersede the previous Commission decisions enforcing preexisting rules and tariff provisions, and that those decisions still apply in determining whether the carrier provided access service. Such a clarification is consistent with the Commission’s action in the *Intercarrier Compensation* proceeding.<sup>3</sup> Sprint suggests that the Draft Order include similar language, with the following sentence added to footnote 141: “The Commission adopted several orders resolving complaints

- 
- (i) delete the word “tariffed” in paragraphs 17 and footnote 47; 20 (two times); 62; 68; 69; 70 (third sentence); footnote 215; 4, 30 and 31 (two times) in the Appendix B Final Regulatory Flexibility Analysis;
  - (ii) delete the last two sentences of paragraph 70;
  - (iii) delete the last sentence of footnote 192.

<sup>3</sup> See *In the Matter of Connect America Fund*, WC Docket No 10-90, Order rel. February 3, 2012, para. 25 (“...the Commission adopted several orders resolving complaints concerning access stimulation under preexisting rules and compliance with the Communications Act. We clarify that the *USF/ICC Transformation Order* complements these previous decisions, and nothing in the *USF/ICC Transformation Order* should be construed as overturning or superseding these previous Commission decisions.”). See also Letter from Joe Marcus, FCC, to D.C. Circuit Ct of Appeals dated December 1, 2011.

Ms. Marlene H. Dortch, Secretary

September 16, 2019

Page 3

concerning access stimulation under preexisting rules and compliance with the Communications Act. We clarify that this *Order* complements these previous decisions, and nothing in this *Order* should be construed as overturning or superseding these previous Commission decisions.”

Sincerely,

*/s/ Keith C. Buell*

Keith C. Buell  
Senior Counsel

Cc: Joseph Calascione  
Lisa Hone  
Gil Strobel  
Lynn Engledow